

AMENDED IN SENATE APRIL 29, 2013

SENATE BILL

No. 541

Introduced by Senator Wyland

February 22, 2013

An act to ~~amend~~ add Section 2079.13 of 10089 to the ~~Civil Business and Professions~~ Code, relating to real ~~property~~ estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Wyland. ~~Residential property~~. *Real Estate Commissioner: Elder Financial Abuse Advisory Committee.*

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Department of Real Estate, which is overseen by the Real Estate Commissioner, the chief officer of the Department of Real Estate. Under existing law, protection of the public is the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions.

This bill would require the department to establish, by January 1, 2016, an Elder Financial Abuse Advisory Committee, as prescribed, to provide to the commissioner, beginning January 1, 2017, and annually thereafter, reports analyzing the department's financial policies relating to real estate and identifying those policies that negatively impact elderly residents.

~~Existing law requires listing agents and selling agents to provide the seller and buyer in a real property transaction with a copy of a specified disclosure form and, except as specified, to obtain a signed acknowledgment of receipt from that seller or buyer subject to certain terms and conditions. Existing law defines various terms for purposes of carrying out that and other related disclosure provisions.~~

~~This bill would make a nonsubstantive change to that definition provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 10089 is added to the Business and~~
2 ~~Professions Code, to read:~~

3 ~~10089. The department shall establish, by January 1, 2016, an~~
4 ~~Elder Financial Abuse Advisory Committee. The committee shall~~
5 ~~be comprised of five representatives from nonprofit corporations~~
6 ~~that are organized pursuant to Section 501(c)(3) of the Internal~~
7 ~~Revenue Code and that maintain the primary purpose of serving~~
8 ~~the elderly population of California. Beginning January 1, 2017,~~
9 ~~and annually thereafter, the committee shall provide to the~~
10 ~~commissioner reports analyzing the department's financial policies~~
11 ~~relating to real estate and identifying those policies that negatively~~
12 ~~impact elderly residents.~~

13 ~~SECTION 1. Section 2079.13 of the Civil Code is amended~~
14 ~~to read:~~

15 ~~2079.13. As used in Sections 2079.14 to 2079.24, inclusive,~~
16 ~~the following terms shall have the following meanings:~~

17 ~~(a) "Agent" means a person acting under provisions of Title 9~~
18 ~~(commencing with Section 2295) in a real property transaction,~~
19 ~~and includes a person who is licensed as a real estate broker under~~
20 ~~Chapter 3 (commencing with Section 10130) of Part 1 of Division~~
21 ~~4 of the Business and Professions Code, and under whose license~~
22 ~~a listing is executed or an offer to purchase is obtained.~~

23 ~~(b) "Associate licensee" means a person who is licensed as a~~
24 ~~real estate broker or salesperson under Chapter 3 (commencing~~
25 ~~with Section 10130) of Part 1 of Division 4 of the Business and~~
26 ~~Professions Code and who is either licensed under a broker or has~~
27 ~~entered into a written contract with a broker to act as the broker's~~
28 ~~agent in connection with acts requiring a real estate license and to~~
29 ~~function under the broker's supervision in the capacity of an~~
30 ~~associate licensee.~~

31 ~~The agent in the real property transaction bears responsibility~~
32 ~~for his or her associate licensees who perform as agents of the~~
33 ~~agent. When an associate licensee owes a duty to any principal,~~

1 or to any buyer or seller who is not a principal, in a real property
2 transaction, that duty is equivalent to the duty owed to that party
3 by the broker for whom the associate licensee functions.

4 (e) “Buyer” means a transferee in a real property transaction,
5 and includes a person who executes an offer to purchase real
6 property from a seller through an agent, or who seeks the services
7 of an agent in more than a casual, transitory, or preliminary manner,
8 with the object of entering into a real property transaction. “Buyer”
9 includes vendee or lessee.

10 (d) “Dual agent” means an agent acting, either directly or
11 through an associate licensee, as agent for both the seller and the
12 buyer in a real property transaction.

13 (e) “Listing agreement” means a contract between an owner of
14 real property and an agent, by which the agent has been authorized
15 to sell the real property or to find or obtain a buyer.

16 (f) “Listing agent” means a person who has obtained a listing
17 of real property to act as an agent for compensation.

18 (g) “Listing price” is the amount expressed in dollars specified
19 in the listing for which the seller is willing to sell the real property
20 through the listing agent.

21 (h) “Offering price” is the amount expressed in dollars specified
22 in an offer to purchase for which the buyer is willing to buy the
23 real property.

24 (i) “Offer to purchase” means a written contract executed by a
25 buyer acting through a selling agent which becomes the contract
26 for the sale of the real property upon acceptance by the seller.

27 (j) “Real property” means any estate specified by subdivision
28 (1) or (2) of Section 761 in property which constitutes or is
29 improved with one to four dwelling units, any leasehold in this
30 type of property exceeding one year’s duration, and mobilehomes,
31 when offered for sale or sold through an agent pursuant to the
32 authority contained in Section 10131.6 of the Business and
33 Professions Code.

34 (k) “Real property transaction” means a transaction for the sale
35 of real property in which an agent is employed by one or more of
36 the principals to act in that transaction, and includes a listing or
37 an offer to purchase.

38 (l) “Sell,” “sale,” or “sold” refers to a transaction for the transfer
39 of real property from the seller to the buyer, and includes exchanges
40 of real property between the seller and buyer, transactions for the

1 ~~creation of a real property sales contract within the meaning of~~
2 ~~Section 2985, and transactions for the creation of a leasehold~~
3 ~~exceeding one year's duration.~~

4 (m) ~~“Seller” means the transferor in a real property transaction,~~
5 ~~and includes an owner who lists real property with an agent,~~
6 ~~whether or not a transfer results, or who receives an offer to~~
7 ~~purchase real property of which he or she is the owner from an~~
8 ~~agent on behalf of another. “Seller” includes both a vendor and a~~
9 ~~lessor.~~

10 (n) ~~“Selling agent” means a listing agent who acts alone, or an~~
11 ~~agent who acts in cooperation with a listing agent, and who sells~~
12 ~~or finds and obtains a buyer for the real property, or an agent who~~
13 ~~locates property for a buyer or who finds a buyer for a property~~
14 ~~for which no listing exists and presents an offer to purchase to the~~
15 ~~seller.~~

16 (o) ~~“Subagent” means a person to whom an agent delegates~~
17 ~~agency powers as provided in Article 5 (commencing with Section~~
18 ~~2349) of Chapter 1 of Title 9. However, “subagent” does not~~
19 ~~include an associate licensee who is acting under the supervision~~
20 ~~of an agent in a real property transaction.~~